IN THE

Supreme Court of the United States

October Term, 1970

No. 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

against

ROBERT WILLIAMS,

Respondent.

BRIEF OF DISTRICT ATTORNEY OF NEW YORK COUNTY, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

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Introduction—Interest of *Amicus*

Amicus is the District Attorney of New York County, the authorized law officer of a political subdivision of the State of New York. *Amicus* files this brief in support of petitioner, State's Attorney of Fairfield County, Connecticut, because the issue here recurs often in New York County—whether a policeman, who while patrolling a high crime area late at night, receives an on-the-spot complaint that a suspect is committing or has committed a crime and

is armed with a pistol, may conduct a limited search of the suspect for the weapon, absent probable cause to arrest. In New York County—Manhattan—police officers are frequently called upon to take immediate action on the basis of on-the-street encounters with citizen informants; offering information about crimes in progress ostensibly committed in their presence. See, *e.g.*, *People* v. *Bronk*, 66 Misc. 2d 932, 323 N.Y.S. 2d 135 (App. Term 1st Dept. 1971), *appeal pending*. In the ten years from 1962 through 1971, thirty New York City police officers were shot to death, four stabbed to death, while encountering suspects.* The decision of the United States Court of Appeals in this case conflicts with New York law, and disregards the reasonableness of limited self-protective actions taken by policemen in the field.

Question Presented

Whether a policeman who, while patrolling a high crime area late at night, receives an on-the-scene complaint that a suspect is carrying narcotics and is armed with a pistol, may conduct a limited search for the weapon.

Statement

Respondent, Robert Williams, was convicted after a trial in the Superior Court of Fairfield County, Connecticut, of possessing narcotic drugs [Connecticut General Statutes §19-246], carrying a pistol without a permit [Con-

* Compiled from the Annual Reports of the New York City Police Department, which were printed until 1970. Information for 1970 and 1971 supplied by the Public Affairs Office of the Police Department.

necticut General Statutes §29-35] and possessing a weapon while operating a motor vehicle [Connecticut General Statutes §29-38]. At a pre-trial hearing to determine the admissibility of the weapon and the drug, the State proved that, while on patrol duty alone at 2:15 a.m. in a section of Bridgeport, Connecticut, noted for its high incidence of crime, Sergeant John Connolly met a person whom he considered trustworthy and reliable. The person pointed to an automobile parked across the street, telling Connolly that the occupant in the vehicle, the respondent, was carrying a pistol in his waistband and was also in possession of narcotics. The officer approached the automobile, and instructed the respondent to open the car door. Instead, the respondent rolled down the window of the door, and the officer then reached inside the window with his hand, removing a loaded .32 calibre revolver from the respondent's waistband. After arresting respondent for possession of a pistol without a permit, and unlawful possession of a weapon while operating a motor vehicle, Sergeant Connolly seized a machete under the front seat of the car and twenty-six glassine envelopes of heroin from the defendant's clothing and wallet. Following a denial of his motion to suppress these items of contraband, respondent was convicted of the three charges. The conviction was affirmed by the Supreme Court of Connecticut.

Respondent then sought federal habeas corpus relief, contending that the weapon and the drugs were procured by an unlawful search and seizure. Although originally affirming, by a divided court, the District Court's denial of habeas corpus, the United States Court of Appeals for the Second Circuit later ruled, six to one, in an *en*

banc decision, that the introduction of the pistol and the heroin at respondent's trial in the State court was barred by the Fourth Amendment. The Court of Appeals concluded that, after speaking with his informant,

> "Sergeant Connolly had neither probable cause [to arrest respondent] nor any other sufficient cause for reaching into [respondent's] waistband, an action which led to the subsequent search of [respondent's] car and the discovery of a machete and narcotics later introduced in evidence at [respondent's] trial. See *Terry* v. *Ohio,* 392 U.S. 1, 1968; *Spinelli* v. *United States,* 393 U.S. 410 (1969); *Aguilar* v. *Texas,* 378 U.S. 108 (1964); *Henry* v. *United States,* 361 U.S. 98 (1959); *Draper* v. *United States,* 358 U.S. 307 (1959)." (Petitioner's Appendix, pp. 1a-2a.)

On January 11, 1972, this Court granted certiorari to review this ruling.

ARGUMENT

Having been told by a person he considered trustworthy that the respondent was carrying narcotics and had a revolver in his waistband, Sergeant Connolly acted reasonably in conducting a limited search for the weapon.

The ruling of the Court of Appeals should be reversed because it drastically and impermissibly curtails the authority of a police officer to make a self-protective search for weapons, previously authorized in *Terry* v. *Ohio,* 392 U.S. 1 (1968), while he is in the course of investigating a serious crime reported by a passerby. In *Terry* v. *Ohio,* this Court sanctioned the self-protective search

> "* * * where a police officer observes unusual conduct which leads him to believe that criminal activity

> may be afoot and that the person with whom he is dealing is presently armed and dangerous . . .'' (*id.* at 30).

In the present case, however, there were no observations by Sergeant Connolly which would have permitted him to make the narrowly defined search upheld in *Terry*. Connolly only saw the respondent sitting in a parked car late at night in a high crime area, which might not have reasonably alerted the officer that a crime was in progress. But the officer was acting upon a tip from a citizen encountered directly across the street from where respondent was seated in his car. In our view, there was even stronger ground than in *Terry* for inquiry and a self-protective search for a weapon.

The Court is called upon to decide initially under what circumstances a police officer's suspicions are reasonably aroused by information communicated to him during a street encounter with a passerby, the information, however, being inadequate to justify an arrest based upon probable cause. Specifically, after speaking to his informant, did Sergeant Connolly have ''constitutional grounds to insist on an encounter, to make a forcible stop''? *Terry* v. *Ohio*, *supra* at 32 (Harlan, J. concurring). Further, assuming that the complaint here demanded further action by Connolly, was his subsequent removal of the revolver from respondent's waistband reasonably necessary for the officer's own safety? In resolving these questions, the Court of Appeals stated merely that Connolly ''had neither probable cause to arrest Williams nor any other sufficient cause for reaching into Williams's waistband * * *'' It is unclear whether the Court decided that the complaint did not present the officer with sufficient grounds to investigate

respondent's presence at the scene, or that if an investigation was warranted, the resulting seizure of the weapon amounted to an unreasonable intrusion with respondent's privacy. Regardless of which ground the Court chose to base its holding on, both grounds are erroneous.

Hearing that respondent had narcotics in his car and was carrying a concealed weapon, Sergeant Connolly was bound to make some inquiry about the matter. For the officer to have ignored the tip entirely and permitted Williams to leave the scene unchecked would have been poor police work and, indeed, a breach of his public duty. In determining whether a police officer has acted reasonably in responding to unusual street occurrences, this Court explained in *Terry* that

> "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry* v. *Ohio, supra* at 27.

Sergeant Connolly was not acting upon an "unparticularized hunch" here. Unlike the officer in *Terry,* he had a direct report of specific crimes. And though most street encounters bring together a citizen and a police officer who have not been previously acquainted, the man to whom Connolly spoke about the respondent was known to the officer and had previously furnished Connolly with information pertaining to other crimes occurring in Brideport. Though none of these prior tips resulted in an arrest, Connolly had nevertheless verified for himself the accuracy of this information, for he concluded that the informant was a trustworthy and reliable person. Surely, there was no reason for Connolly to dispute the honesty of the informa-

tion here. Unlike most tips delivered by professionally paid informers, the tip here was spontaneously communicated by the man after he received an unexpected visit from Connolly while the officer was patrolling his route. From this circumstance, it may be presumed that the informant was speaking as a concerned citizen, interested purely in helping the police to ferret out a crime. The tip also gained credence for another reason. In most instances in which a search or arrest is based upon a tip received from an informer, the informer is never called upon to personally confront the man whom he is accusing of a crime. *See, e.g., McCray* v. *Illinois,* 386 U.S. 300 (1967). Yet, as must have been perfectly obvious to Sergeant Connolly, the informant here was willing to remain at the scene while Connolly verified his story, thereby risking embarrassment as well as the wrath of the officer and the respondent if his information proved to be untrue.

In short, Connolly would have been negligent under the circumstances to forgo any inquiry of the respondent concerning the charges made by the informant. To have let Williams drive away undisturbed might have been to ignore the only means of apprehending a man who might later become involved in a sale of narcotics, a serious assault, or a homicide.

Since Connolly was entitled to investigate respondent, the officer's decision to remove the revolver from respondent's waistband cannot be faulted. The seizure was but a limited intrusion reasonably employed as a self-protective measure during inquiry concerning a report about two serious crimes. And the potential danger to the officer was obvious from the report itself, the complaint having specified that Williams was in possession of heroin and armed

with a concealed weapon. Further, the officer could discount the possibility that he was dealing merely with a harmless drug user. The reported presence of the weapon and the suspect's possession of an automobile, coupled with the late hour of the night, made it much more likely that Williams was a narcotics seller, perhaps waiting for a customer or supplier, plying his trade after fortifying himself with a weapon to prepare against any confrontations with patrolling police officers or robbers. In any event, Sergeant Connolly's belief that respondent was hiding a revolver inside his trousers surely justified a limited search for the weapon to eliminate the grave danger to the officer and those around him before Connolly proceeded any further with his investigation.

Nor can it be argued that the United States Constitution required Connolly to have prefaced his search by perhaps making some preliminary inquiry of the respondent. This course of action would have been ill-advised, or an experienced police officer could have thought so, for it might have subjected the officer to an even greater likelihood of harm than normally present in the usual street encounter.

> "If we recognize the authority of the people to stop a person and inquire concerning unusual street events we are required to recognize the hazards involved in this kind of public duty. The answer to the question propounded by the policeman may be a bullet; in any case the exposure to danger could be very great. We think the frisk is a reasonable and constitutionally permissible precaution to minimize that danger. We ought not, in deciding what is reasonable, close our eyes to the actualities of street dangers in performing this kind of public duty." *People* v.

Rivera, 14 N.Y.2d 441, 446 (1964), *cert. denied*, 379 U.S. 978 (1965). *See also Terry* v. *Ohio*, *supra* at 33 (Harlan, J., concurring).

A contrary result would require a police officer to retreat from the scene and, in effect, turn his head the other way when confronted with the type of report received here. For if it is unreasonable for an officer to attempt to disarm a suspect believed to be carrying a revolver, then the officer can hardly be expected to risk his life by making inquiry in the first instance.*

Further, the search was properly executed, it having been limited to the sole objective of discovering the whereabouts of a weapon. Initially, unlike the officer in *Terry* v. *Ohio*, Connolly did not choose to pat down the outer portions of the suspect's clothing. As a number of courts have held, however, this particular method of locating a weapon is not mandatory. *See, e.g., United States* v. *Berryhill*, 445 F.2d 1189, 1193 (9th Cir. 1971) (inspection of handbag) (*dictum*); *State* v. *Dennis*, 113 N.J. Super. 292, 273 A.2d 612, 616 (1971) (removal of suspect's hand from his pocket); *see also People* v. *Woods*, 6 Cal. App. 3d 832, 86 Cal. Rptr. 264 (1970); *cf. Tinney* v. *Wilson*, 408 F.2d 912 (8th Cir. 1969). Too, this Court acknowledged in *Terry* that the limitations upon a self-protective search "will have to be developed in the concrete factual circumstances of the individual cases." *Terry* v. *Ohio*, *supra* at 29. The Court merely held that the search must "be confined in scope to an intrusion reasonably designed to dis-

*Of the 633 police officers killed in the line of duty in United States in the ten years 1961-1970, 57 were killed while investigating suspicious persons. 175 officers were killed while attempting arrests of burglary or robbery suspects during the crime or in pursuit, and 168 while attempting other arrests. FBI 1970 UNIFORM CRIME REPORTS, pp. 44-53.

cover guns, knives, clubs, or other hidden instruments for the assault of the police officer" (*id.* at 31).

The search conducted in the present case did not violate this standard. At the time in question, Connolly was standing next to the left front door of respondent's automobile, and Williams was seated inside the vehicle at the steering wheel. Connolly had little time to calculate the most practical way to remove the weapon without interfering substantially with Williams's privacy. The pat-down type of search would have been difficult to accomplish, Williams having merely rolled down the window when he was asked to step out of the car. Indeed, while Williams's maneuver might have been innocently designed to let him hear the officer's inquiry better, it might have been calculated to prepare for an assault upon the officer, particularly if Williams had heard the officer's reasonable request that he open the door, and was ignoring it. Rebuffed, Connolly could reasonably have decided that his most prudent course was to reach inside the waistband of respondent's trousers, where, according to the complaint, the revolver was hidden. To have searched other parts of his clothing first, postponing an examination of the very spot where the deadly weapon was reported to be hidden, would have been folly. The search was therefore "reasonably limited in scope to the accomplishment of the only goal which might conceivably have justified its inception—the protection of the officer by disarming a potentially dangerous man." *Sibron* v. *New York*, 392 U.S. 40, 65 (1968).

Numerous rulings support the foregoing views. For instance, both the New York Court of Appeals and the Supreme Court of Illinois have held that information that an armed man is roaming the streets or congregat-

ing with other people mandates an immediate search of the suspect for the weapon. This is so even if the information is transmitted from an anonymous source. Thus, in *People* v. *Taggart*, 20 N.Y.2d 335 (1967), *appeal dismissed*, 392 U.S. 667 (1968), decided before *Terry* v. *Ohio*, the New York Court of Appeals held that a police officer, after receiving an anonymous tip that the defendant was carrying a loaded revolver, had a "reasonably based suspicion" that the defendant was armed, and secondly, was entitled under the facts of the case to search the defendant for the weapon. *See also People* v. *Arthurs*, 24 N.Y.2d 588 (1969); *People* v. *Teams*, 18 N.Y.2d 835 (1966), *aff'g*, 20 A.D. 2d 803 (2d Dept. 1964). In *Taggart*, the detective learned from the telephone caller that a blond, blue-eyed male about eighteen years old, wearing white chino-type trousers, was at a certain location and that he had a loaded .32 calibre revolver in his jacket. At the scene, the officer saw a youth, believed to fit the description, standing "in the middle of" some children. *People* v. *Taggart*, *supra* at 337. The holding in *Taggart* was followed by the Supreme Court of Illinois in *In re Boykin*, 39 Ill. 2d 617, 237 N.E. 2d 460 (1968). There, an assistant principal received an anonymous tip that a student, then attending a class, was in possession of a gun. The principal summoned two policemen, assigned to the school, from their squad car, parked in front of the school building, who removed the weapon from the student's pants pocket after he was taken out of the classroom. In *Ballou* v. *Massachusetts*, 403 F.2d 982 (1st Cir. 1968), *cert. denied*, 394 U.S. 909 (1969), the Court upheld a pat-down search of the defendant on the basis of an anonymous tip that the defendant, one McLean and a third person were armed with pistols in front of a cafe, coupled with the

officer's knowledge that the defendant had been previously convicted of a weapon charge and was an associate of McLean, then the leader of a faction involved in a local "gang war."

Also in point is *Gaskins* v. *United States*, 262 A.2d 810 (D.C. Cir. 1970). In *Gaskins*, a policeman, while in the field, was stopped by a taxicab driver, who pointed to three men, indicating that he "just saw a guy up the street tuck a gun under his belt." Though the driver did not specify which of the men was armed, the Court of Appeals for the District of Columbia Circuit held that the officer properly searched all three. *See also United States* v. *Dowling*, 271 A.2d 408 (D.C. Cir. 1970); *Clarke* v. *United States*, 256 A.2d 782 (D.C. Cir. 1969); *People* v. *Lee*, 48 Ill. 2d 272, 269 N.E. 2d 488 (1971); *State* v. *D'Orsi*, 113 N.J. Super 527, 274 A.2d 586 (1971). Similarly, in *People* v. *Joslin*, 32 A.D. 2d 859 (2d Dept. 1969), after proceeding to a restaurant in response to a telephone message, a policeman was told by a waitress that she had been advised by one of the patrons that the defendant was holding a gun inside his shirt. Escorted to a room in the back of the premises, the defendant, upon being questioned about the incident, acknowledged that the charge was true. The weapon was then discovered after the defendant "made a motion towards the front of him," prompting the officer to pat down the inside of the defendant's shirt. *See also United States* v. *Unverzagt*, 424 F.2d 396 (8th Cir. 1970).

This Court has previously stated that "what the Constitution forbids is not all searches and seizures but unreasonable searches and seizures." *Elkins* v. *United States*, 364 U.S. 206 (1960). And there is no ready formula

for what is reasonable "other than by balancing the need to search against the invasion which the search entails." *Camara* v. *Municipal Court*, 387 U.S. 523, 534-5 (1967). The appellate decisions cited above represent sound applications of this rule. Permitting brief detention and a limited search on the basis of the information received in the present case is a small price to pay for the prevention of a serious crime arising out of possession of a firearm or narcotics. And it is doubtful that the lives of policemen and civilians can be balanced against the possible embarrassment and inconvenience caused by a minor intrusion with a citizen's privacy.

Though the six-judge majority of the Court of Appeals did not explain why the report and the officer's knowledge was insufficient to justify the seizure of Williams's revolver, perhaps the reasons for this conclusion appear in Judge Friendly's opinion dissenting from the original panel's decision affirming the denial of respondent's application for habeas corpus relief. While acknowledging that a self-protective search for weapons depends only upon a reasonable suspicion that a suspect is armed and dangerous, Judge Friendly was unwilling to sustain the seizure of the revolver on this ground, stating:

> "I would not find the combination of Officer Connolly's almost meaningless observation and the tip in this case to be sufficient justification for the intrusion. The tip suffered from a three-fold defect, with each fold compounding the others. The informer was unnamed, he was not shown to have been reliable with respect to guns or narcotics, and he gave no information which demonstrated personal knowledge or—what is worse—could not readily have been manufactured

> by the officer after the event. To my mind, it has not been sufficiently recognized that the difference between this sort of tip and the accurate prediction of an unusual event is as important on the latter score as on the former." Petitioner's Appendix B p. 21a.

It appears, therefore, that Judge Friendly ruled that the tip was defective because it did not comply with the two-pronged test of probable cause formulated by this Court in *Spinelli* v. *United States*, 393 U.S. 410 (1969).* *See also Aguilar* v. *Texas*, 378 U.S. 100 (1964); *Harris* v. *United States*, 403 U.S. 573 (1971); *Draper* v. *United States*, 358 U.S. 307 (1959). *Spinelli*, it will be recalled, held that where the Government relies upon an informer to establish probable cause, two conditions must be met. It must be

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* It may be noted that Judge Friendly's additional criticism pertaining to the State's failure to identify the informant is unfounded. In *McCray* v. *Illinois*, 386 U.S. 300 (1967), the Court held that where the People rely upon an informant to establish probable cause, neither the identity of the informant nor his production at a subsequent suppression hearing is required by the Fourth Amendment. We are therefore at a loss to understand why Judge Friendly would require the State to supply this information when ever a policeman's suspicions are reasonably aroused by a report about a crime furnished by a passerby whom the officer has encountered while patrolling the streets.

Judge Friendly argues, however, that *McCray* should not be followed here, apparently because of his fear that Sergeant Connolly testified untruthfully about whether he actually spoke to an informer. Suffice to say, any doubts concerning the officer's veracity could have been explored by defense counsel through cross-examination at the suppression hearing. The United States District Court found that the informer existed. Nor is the possibility of fabricated testimony by a few police officers any reason to modify the previous holding announced in *McCray*. The creation of a general rule should be responsive not to a few, but to the great majority of policemen, whom it may be presumed testify regularly to the truth. Further, if a police officer is willing to lie about the existence of an informant, it is just as reasonable to suppose that the officer would risk perjuring himself about observations of a crime. Yet the Constitution does not require corroboration of eyewitness testimony by a policeman.

shown that the informant is reliable, and there must be an indication of some of the underlying circumstances from which the informant concluded that a crime is being committed. But this test of probable cause is not the test governing the self-protective maneuver in this case. And the maneuver was reasonable, based upon the officer's information, and the setting. Arguably, the informant to whom Connolly spoke before the officer conducted his search was not shown to be "reliable" in terms of probable cause for arrest. Though the informant had previously supplied the officer with information concerning homosexual activity at the local railroad station in Bridgeport, the information never resulted in any arrests or convictions. *See e.g., People* v. *Hendricks*, 25 N.Y.2d 129, 134 (1969). And, as in *Aguilar* v. *Texas*, the tip was conclusory, the informant not having specified the source of his knowledge that the respondent was armed with a weapon.

The judge's reliance upon the decision in *Spinelli* in the context of the present case was misplaced. Initially, in assessing the sufficiency of the tip under *Spinelli*, Judge Friendly disregarded the pronouncement in *Terry* that a self-protective search for weapons, unlike a search incident to an arrest, need not be based upon a showing of probable cause. For an officer who has probable cause to make an arrest may conduct a search incident to that arrest not only for weapons but also for other incriminating evidence within the suspect's control. *Chimel* v. *California*, 395 U.S. 752, 763 (1969). As in *Terry*, however, the scope of Connolly's initial intrusion with respondent was far more limited than a search incident to an arrest, the officer intending only to inspect the inside of respondent's waistband, where he was told that the revolver would be found.

Further, *Spinelli* was primarily intended to regulate the issuance of search warrants based upon hearsay communications. To require an applicant for a search warrant to investigate the reliability of a new informant and his information may well be reasonable, since there is usually ample time for a law enforcement official to make this sort of inquiry before he decides to present his information to a magistrate, and the scope of the expected intrusion is great. It is quite a different matter, however, to suggest that these investigatory burdens must also be assumed by a patrolling police officer, alerted by a passerby in the street that a person lurking nearby is armed with a loaded revolver. Indeed, the courts are in agreement that the two-pronged test recited in *Spinelli* is to be relaxed in the context of street encounters between policemen and private citizens reporting crime. An officer has probable cause to make an arrest, the courts have held, merely if the citizen reporting a crime in the street specifies that he has witnessed or was the victim of that crime. For an eyewitness to a street crime is an inherently reliable one, thereby precluding the need to establish the witness's reliability through other independent means. *See, e.g., People* v. *Hogan,* 71 Cal.2d 888, 457 P.2d 868 (1970); *People* v. *Hoffman,* 45 Ill.2d 221, 258 N.E.2d 326 (1970), *cert. denied,* 400 U.S. 904 (1971); *State* v. *Knudson,* 51 Wis.2d 270, 187 N.W.2d 321 (1971); *McCreary* v. *Sigler,* 406 F.2d 1264, 1269 (8th Cir. 1969); *United States* v. *Acarino,* 408 F.2d 512, 514 (2d Cir.), *cert. denied,* 395 U.S. 961 (1969); *Coyne* v. *Watson,* 282 F. Supp. 235 (E.D. Ohio 1967); *cf. Gaskins* v. *United States, supra.*

Presumably, therefore, Judge Friendly would have been satisfied if Connolly's informant had uttered the magical

words, "I saw him" in possession of a weapon. Therefore, because these words were omitted, Connolly should have cross-examined the informant with respect to the source of his information before proceeding toward Williams's car.

Imposing this sort of rule, however, in such rigid fashion to the facts of this case violates the spirit of this Court's previous interpretation of the Fourth Amendment. Having been informed that an armed man was lingering in a high crime area late at night, Sergeant Connolly was faced with "exigent circumstances," which always demand a more flexible approach to the concept of reasonableness. *Warden* v. *Hayden*, 387 U.S. 294 (1967); *McDonald* v. *United States*, 335 U.S. 451 (1948). To take an example, police officers, alerted that a robber has just fled from the scene of a stick-up into his home, may enter the premises without a warrant and seize "mere evidence" linking the suspect to the crime, though the search of a dwelling is almost never sanctioned, absent the issuance of a search warrant based upon probable cause. *Warden* v. *Hayden, supra*; *Coolidge* v. *New Hampshire* 403 U.S. 443 (1971). Similarly, unannounced entry by the police into a home, though normally improper, is nevertheless reasonable if necessary to prevent the destruction of evidence. *Ker* v. *California*, 374 U.S. 23 (1963).

Though these principles were apparently ignored by the Court of Appeals, their application to the facts at bar surely vindicates the actions of Sergeant Connolly. For, under the circumstances here, it is simply asking too much to have expected the officer to have delayed his "forcible encounter" with Williams until he first ascertained how

the informant knew that Williams was armed. Perhaps Connolly declined further inquiry with the informant, sensing that respondent was preparing to flee. *Cf. People* v. *Bronk*, 66 Misc.2d 932, 323 N.Y.S.2d 135 (App. Term, 1st Dept. 1971), *appeal pending*. Or maybe he thought that continued conversation with the informant—diverting the officer's attention from Williams—would have been imprudent because Connolly was standing directly in Williams's line of fire. In any event, to this experienced officer, the information was persuasive enough, the complainant sufficiently credible, for Connolly to check it out. To be sure, another officer placed in Connolly's position might have thought it wiser to obtain a more detailed version before detaining the suspect. The contention that the latter path was required by the United States Constitution, however, is unreasonable. For, despite Judge Friendly's gratuitous observation that although Connolly could believe that the suspect had a gun, he "could not have believed that * * * the use of a gun was imminent" [Petitioner's Appendix B p. 18a], any person carrying a concealed weapon at 2 a.m. poses a hazardous, if not deadly, confrontation for an officer. And a policeman must be given some latitude —withheld here by the Court of Appeals—in deciding how to handle this type of situation.

The distinguished court below too lightly substituted its own judgment for that of a high-ranking police officer, who exposed his life and limb in the conscientious investigation of a report of danger, and who is certainly more experienced in the field than a member of the judiciary. A police officer's actions should not "be judged from [the] remote vantage point of a library." *Gaskins* v. *United*

States, supra at 811. While on duty in a high-crime area late at night, Sergeant Connolly unexpectedly came upon a known citizen, who reported that a man in a parked car across the street was carrying illegal drugs and was armed with a loaded revolver. Though arguably not "reliable" under the standards required to establish probable cause for arrest, the "informant" was nevertheless considered trustworthy and reliable by the officer, whom the informant had previously supplied information about other crimes. Also, in appraising the substance of the tip, Connolly knew that the informant was willing to place his credibility on the line and risk an immediate confrontation with a suspect right on the scene. Sergeant Connolly, after weighing all of the foregoing circumstances, and after offering to jeopardize his own safety and possibly his life, is now told that his actions were "unreasonable," that contraband he found must be suppressed, and that a guilty man must go free. And, of course, what steps should have been taken by the officer are not specified. The ruling of the Court of Appeals leaves no discretion to a policeman, who, confronted with a report about a potentially dangerous crime, must make an instant determination as to the proper course of action to pursue. Such a result was never intended by the commands of the Fourth Amendment.

Conclusion

The judgment below granting the writ should be reversed and the writ should be denied.

Respectfully submitted,

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